

Village of Irvington
Zoning Board of Appeals

Minutes of Meeting held November 28, 2001

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Wednesday, November 28, 2001, in the Village Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
Robert L. Bronnes
Bruce E. Clark
George Rowe, Jr.

Mr. Lustenberger acted as Chairman and Mr. Rowe as Secretary of the meeting.

There were four matters on the agenda, one a continuation and three new matters:

Continuation

2001-13 Bridge Street Properties, LLC - One Bridge Street, Irvington (Sheet 3; Lots P103, P102, P105, P4B and Sheet 7; Lot P89)

New Matters

2001-18 Stanley Rubenzahl - 76 North Broadway (Sheet 10, Lot P101)

2001-19 Astor Street Associates - South Astor Street, (Sheet 7A, Block 230)

Bridge Street Properties, LLC

Applicant seeks an interpretation of Section 224-3 of the Irvington Zoning Ordinance with respect to the definition of a "Lot" and variances from Ordinances § 224-39E(7)(a) and (b) (stating the required number of off-street parking places in the Industrial District) and from § 224-3 (defining the required size of parking spaces). The matter was previously heard on September 25 and October 23. Mr. Clark did not vote on this matter. Applicant appeared by its attorney, Mr. Kirkpatrick of Messrs. Oxmon et al., White Plains, N.Y. There were no appearances in opposition.

The parcels owned by Applicant are divided in two by the section of Main Street that runs from the west side of the Metro North Railroad tracks to the Hudson River. The portion to the south of Main Street (the "South Lot") contains buildings and some parking spaces. The portion to the north of Main Street (the "North Lot") contains two relatively small buildings (the Pateman building and a maintenance shed) but is primarily devoted to a paved parking area serving Applicant's tenants in the buildings on the South Lot. Applicant proposes to build a new

building on the South Lot pursuant to plans under review by the Planning Board. The erection of that building will necessitate the creation of additional parking spaces on the South Lot to meet the number of off-street parking spaces required by Ordinance § 224-39E(7)(a) and (b). Applicant's request here is essentially a request that parking spaces available in the North Lot be used to satisfy the off-street parking requirements for the South Lot.

After discussion, the Board voted to grant a variance from Ordinance § 224-39E(7)(a) and (b) on condition that Applicant enter into the agreement with the Village of Irvington in the form submitted to the meeting and on the further condition that Applicant take such steps as are necessary to record that Agreement in the Westchester County Clerk's office, and in such other places, if any, as may be necessary, to assure notice of the agreement to purchasers of the South Lot.

The South lot therefor achieves the requisite number of off-street parking places mandated by Ordinance § 224-39E(7)(a) and (b), as demonstrated by Applicant's site plan documents submitted at the hearing and as demonstrated by Applicant's calculation, prepared at the Board's request and submitted to the meeting.

Applicant also requests a variance from Ordinance § 224-3 that defines a "Parking Space" as being 9 1/2 feet wide and 20 feet long, so as to permit the maintenance on the North Lot of spaces of only 8 1/2 feet by 18 feet. In connection with this request, the Board accepted into the record letters from the Chairman of the Planning Board, Peter C. Lilienfield, and from the Village Engineer, Ralph Mastromonaco, dated November 27 and November 26, 2001, respectively, commenting upon the request. Mr. Lilienfield's letter stated that the Planning Board had no objection to the request "provided that this does not create a precedent for future actions (regarding this or other sites) which would result in an increase in building area beyond that which could be achieved using the 9.5' x 20' dimension." Mr. Mastromonaco's letter stated that where the parking requirements have already been met on a site plan using the current standard, he had "no objection to an applicant providing the reduced space dimension of 8.5' x 18.5' with a maneuvering aisle of 24 feet."

The Board concluded that the facts of this case were unique enough to eliminate the likelihood of any precedential effect on other cases.

The Board noted inter alia that the parking lots are in a large open paved area now used for parking, unlike

any other area in the District, and that spaces with reduced dimensions have been used in the North Lot for over 20 years.

The Zoning Board unanimously voted to grant the application for variances.

Stanley Rubenzahl

Mr. Karl Dibble appeared on behalf of Mr. Rubinzahl. In essence, applicant seeks to permit Mr. Dibble to sell Christmas trees during the Christmas season on the premises. The applicant's notice stated that he seeks a modification of a Special Use Permit "originally issued by the ZBA" while the applicant stated that he seeks a variance from that permit.

Mr. Dibble pointed out that since 1956 the buildings on the premises have been used for residential and development uses and "offices in connection therewith" pursuant to a variance given by the Board on April 12, 1956, renewed by this Board as a special use permit on September 6, 1961.

The question is whether the following language prohibits the use sought.

"No building or structure or auxiliary building shall be used for the manufacture, display or sale of any equipment,..., wares and merchandise-or any other commercial.... use..."

The Board found that neither a variance from or, a modification of, a special permit is required, except as to time limit.

The Board noted that the use to which Mr. Dibble will put the premises does not involve buildings, structure or auxiliary buildings and that the use proposed by Mr. Dibble would not adversely affect the neighborhood, as provided in Village Law Section 7-725-b.1. The Board also noted the contiguous lot to the north (Abbott House) and the subject premises are used for non-residential purposes and are exceptions to the otherwise residential character of the neighborhood.

The Board voted to permit the use proposed for the 2001 season, the permit to expire December 31, 2001. The Board emphasized that its action does not constitute issuance of a peddler's license to Mr. Dibble which is required and only issuable by the Trustees.

There was no opposition to the application.

Astor Street Associates

This is the third application with respect to the subject lot. Applicant seeks three interpretations, five variances and, depending upon the outcome of the interpretations, five additional variances from the

provisions of the Village's Zoning Ordinance. The requests arise from Applicant's desire to convert to residential use an unused Metro North power station in the Industrial District (the "Building"). The applicant was represented by Mr. Paul D. Sirignano of the Collier firm of White Plains, New York. There were no appearances in opposition to the application.

In its February 28, 2001 decision, the Board interpreted Ordinance § 243-39E(1) to require that a building to be used pursuant to a special permit under that section must be used for both multi family dwellings and for municipal or public facilities. In addition, the Board granted a variance from Code § 7-736(2), requiring street access to the premises, on condition that the Applicant obtain site plan approval from the Planning Board for the development of the subject lot. Finally, the Board denied a variance from Ordinance § 243-52, providing that access to a building cannot be had solely through a public parking lot, without prejudice to renewing the application for this variance when the development plans for the lot were final.

In its July 31, 2001 decision, the Board concluded that under Ordinance § 243-39(E), it had the power to issue advisory opinions to the Board of Trustees, which could then condition its issuance of a special permit

upon an applicant's acceptance of those opinions, and
opined as follows:

1 Applicant's request for a parking variance, pursuant to a parking plan submitted at the hearing, was appropriate, subject to certain conditions.

2 The Building's height of two feet over the 55-foot maximum was appropriate, provided that certain changes were made to the rear wall windows to accommodate objections from a rear--yard neighbor.

3. A variance from the prohibition against access through a public parking lot was appropriate, based upon plans submitted at the hearing as to dwelling units and parking places.

4 The Board declined to pass upon the request for five stories instead of the permitted four because it did not have sufficient evidence in the record of the need for the additional story.

At the conclusion of its July 31 decision, the Board noted that:

[T]here [is] an open question as to whether the proposed building [meets] the requirements of Ordinance § 243-39E(1)(A) and (B) that the building be used both for multi-family dwellings and for public facilities "owned or sponsored by the Village." The building is devoted solely to dwelling units, some of which will comprise affordable housing units. Whether the affordable units supply the necessary public use is for the Board of Trustees to determine when they ultimately decide whether or not to issue the special permit.

The present proceeding came to the Board with a request from the Board of Trustees that this Board grant or deny variances in response to Applicant's requests, rather than issuing advisory opinions. The Board of Trustees

still retains the ultimate authority to issue a special permit with respect to the premises.

Ordinance § 224-89D

Ordinance § 224-89D provides in pertinent part, as follows:

"[a]ny building...which...does not conform to one or more of the area or height requirements [of the Ordinance] may be altered or restored...provided that [such alteration or restoration does not] increase the degree of nonconformity thereof."

In this case, the Building, as it presently exists, already exceeds the Ordinance's maximum height limitation by two feet and intrudes into the minimum side yard requirements on both its sides. Applicant's alterations to the Building will be primarily inside and will not change its outside dimensions, width or height, at all. Therefore, Applicant argues, since it is not increasing an already existing nonconformity, it need not, under the quoted language from Ordinance § 224-89D, obtain a variance for the existing side yard and height nonconformities. The Board agreed, and did not address Applicant's contingent requests for variances from Ordinances §§ 224-39E(4) and 224-39E(6) (b).

Ordinance § 224-3 (Definitions)

Ordinance § 224-3 states that the term "Building" shall include "walls, other than retaining walls,...not more

than 6 1/2 feet at the lower ground level." Applicant's plans call for a retaining wall to the rear of the lot that will be 18 feet high. Applicant asks whether this retaining wall comes within § 224-3's definition of a "Building," in which case Applicant will need a variance because the retaining wall exceeds 6 1/2 feet. The Board noted that retaining walls are excepted from the definition of "Building" and held no variance is required.

Ordinance § 224-3 defines "Dwelling Unit" as a self-contained portion of a building "containing complete housekeeping facilities for only one family." Applicant asks whether the office that it plans for the first floor of the building is a "Dwelling Unit" within the meaning of § 224-3, in which case the total number of dwelling units in the Building will change and with it, the required land area for the lot (§ 224-39E(3)) and the required number of off-street parking places (§ 224-39E(7)) also changes. The Board noted that the definition of a "Dwelling Unit" describes a space for family use, with reference to cooking and sanitary facilities, and in so doing necessarily excludes space to be used as an office. The Board concluded that office space does not constitute a "Dwelling Unit" within the meaning of Ordinance § 224-3, and that no

variances for land area (§ 224-39E(3)) and parking spaces (§ 224-39E(7)) are required.

In passing upon each of the following variances, the Board considered the criteria specified in Village Law § 7-712-b(3). The Board noted that Applicant's basic purpose, to convert an unused power station to apartments, with attendant improvements to the property, creates not only a benefit to the Applicant, as weighed against any detriment to the health, safety and welfare of the neighborhood and community, but also confers a decided benefit on the neighborhood and community themselves. It also noted that an unsightly property will be made more attractive in appearance and be put to a productive use and the community will benefit both from the creation of an attractive property and from Applicant's agreement with the Board of Trustees to rent some of the apartments at below market rates, so as to contribute to the Village's affordable housing needs. The Board observed that the initial weighing of benefit versus detriment, as mandated by Village Law § 7-712-b(3), creates a strong presumption in favor of the variances requested.

The Variance From Subdivision Regulation § 188-19G (Frontage)

Subdivision Regulation § 188-19G provides in pertinent part:

All lots shall have a minimum frontage on a public street equal to the frontage required in Chapter 224, Zoning.

The Board noted that the frontage requirement is primarily intended to avoid the proliferation of flag lots in residential districts; indeed, Ordinance § 224-10, one of the two provisions that make up the frontage requirement, only applies to residential districts - the threat of infill through the creation of flag lots is not as prevalent, if it exists at all, in the Industrial District where the subject property is located, and the frontage variance simply recognizes an existing condition, and in so doing does not, as a matter of fact, "vary" existing conditions materially or adversely from what they already are.

The Variances From Ordinance §§ 224-39E(7)(a) and (b) (number of required off-street parking spaces) and 224-3 (size of parking spaces)

Ordinance §§ 224-39E(7)(a) and (b) require that there be one off street parking space for each dwelling unit in the Building and one additional space for every 500

square feet of ground floor space not used for housing. Applicant calculates that it needs 22 off-street parking spaces under this formula. In its July 31, 2001 decision the Board opined that a plan then showing only 16 off-street parking spaces for the premises was acceptable based upon the transfer of nine commuter parking spaces from Metro North to Applicant, which would more than make up the shortfall, citing a June 25, 2001 letter from Stephen A. McCabe, the Irvington Village Administrator, to Peter Lilienfield, Chairman of the Village Planning Board, stating that the Village Administrator had advised Astor Street Associates that "based on research by Larry Schopfer and reported to the Village Board, a loss of approximately 9 spaces from the commuter parking lot [to be used for this building] would not be a problem."

Since the July 31 decision, however, Applicant advises that it has had to alter its off-street parking plans because of the Irvington Fire Department's requirements for access to the rear of the Building, where some of the parking spaces are located. Applicant's site plan now calls for 18 spaces, scattered between the rear, front and southern side of the building, plus the transfer of 4 spaces to the Applicant's premises from Metro North. The transfer of four spaces will achieve the required 22-

space minimum. Applicant advised the Board at the November 28 hearing on this Application that the loss of six commuter spaces (four for parking and two for access) is acceptable to the Board of Trustees. That number also falls within the acceptable loss of commuter spaces described in the Village Administrator's June 25, 2001 letter to the Planning Board Chairman, cited above. Therefore, the Board concluded that the requested variance from the provisions of Ordinance § 224-39E(7) (a) is warranted, taking into account all of the factors described in Village Law § 7-712-b(3).

Ordinance § 224-3 requires that parking spaces be 9 1/2 feet wide and 20 feet long. Certain of Applicant's spaces, which will be designated for compact car parking, will be 8 feet wide and 20 feet long. The Board noted that although the smaller spaces do not appear to meet the conditions described in the Bridge Street matter heard at this meeting as to maneuver room and head-on parking, but they are nevertheless restricted to compact cars, for which those conditions can, the Board assumed, be reduced to the extent set forth in Applicant's plans submitted at the hearing. The Board relied on the plans submitted as having been drafted to comport with the physical requirements for parking compact cars in the spaces shown for those cars on

the plans. On this basis, the Board approved the request for a variance from the parking space size requirements of Ordinance § 224-3.

With the approval of the forgoing parking variance the approval necessarily follows of the request for a variance from Ordinance § 224-55B, which requires that off street parking spaces shall be "provided as required in this chapter in all instances where an existing building is converted to a use for which such parking spaces are so required."

The Variance From Ordinance § 224-39E(5)(b)
(height and number of stories)

Ordinance § 224-39E(5)(b) provides that no building in the Industrial District shall exceed 55 feet in height or four stories. In its July 31 decision, the Board granted a variance from the height limitation, with conditions, but declined to pass upon the request for a variance from the limitation on number of stories, without prejudice to renewing same. The addition of an additional story to the inside of the existing building, without increasing its height, the Board noted, has no adverse impact on the community or neighborhood, as to appearance, population density or character of the neighborhood. On the other hand, Applicant represents that the additional

story is necessary to make the conversion of the Building to apartments economically feasible, and thus to carry out an overall conversion that, as stated above, clearly benefits the neighborhood and community. Therefore, the Board granted the requested variance from Ordinance § 224-39E(5)(b) to permit the addition of a fifth story inside the Building, subject to the same conditions as were imposed on the variance from the height limitation in its July 31, 2001 decision.

The grants of the variances described above carry with them a grant of a variance from Subdivision Regulation § 118-19F(1), which requires that all lots conform in all respects with the Zoning Ordinance.

For the reasons given above, the Board voted unanimously as follows:

Interpretations

Ordinance § 224-89D. (The Application is not increasing a non-conformity and therefore this section does not apply).

Ordinance § 224-3 (Definitions). (A retaining wall is excepted from the definition of "Building" and the definition of "Dwelling Unit" does not include office space).

Variances

Subdivision Regulation § 188-19G (Frontage).

GRANTED

Ordinance §§ 224-39E(7) (a) and (b) (number of required off-street parking spaces).

GRANTED

Ordinance § 224-3 (size of parking spaces).

GRANTED

Ordinance § 224-39E(5) (b)(height and number of stories).

GRANTED

Ordinance § 224-55B (parking shall be provided as required in the Zoning Chapter).

GRANTED

Subdivision Regulation § 188-19F(1)
(all lots must conform to the Zoning Ordinance).

GRANTED

The grant of all of the above variances is conditioned upon there being no material change in the plans submitted to the Board and made a part of the record herein, and upon the Board of Trustees finally issuing the special permit authorizing the conversion of the subject lot to residential use. If for any reason that permit is not issued, then these variances lapse. The Board also reiterates the observation in its July 31, 2001 decision that there remains a question for the Board of Trustees to decide as to whether the Building's affordable housing units provide the "public purpose" element required by Ordinance § 224-39E(1)(A) and (B).

Gleason

This application is for a variance from the lot width requirements of § 224-10 of the Irvington Zoning Ordinance and to interpret § 224-3 so as to designate the eastern yard of the subject lot as the lot's rear yard.

The Board concluded that the benefit from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. In particular, the Board found that granting the variance would not produce an undesirable change in character of the neighborhood or a detriment to nearby properties.

The Board also found that the benefit sought could not feasibly be achieved by any method other than a variance, that the requested variance would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variance was not self created.

There was no opposition to the application.

The Board voted unanimously to grant the request for a variance from the lot width requirements of Ordinance

§ 224-10 in accordance with plans submitted at the hearing and to interpret Ordinance § 224-3 so as to designate the eastern yard of the lot as the lot's rear yard.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, unanimously adjourned.

A handwritten signature in black ink, appearing to read "George Rowe, Jr.", written in a cursive style.

George Rowe, Jr.